

EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X **Docket#**
WOMAN OF COLOR FOR EQUAL : 22-cv-2234-ERK-LB
JUSTICE, ET AL., :
: Plaintiffs, :
: :
- versus - : U.S. Courthouse
: Brooklyn, New York
THE CITY OF NEW YORK, :
: August 16, 2023
: Defendant :
-----X

TRANSCRIPT OF CIVIL CAUSE FOR PRE-MOTION CONFERENCE
BEFORE THE HONORABLE ERIC R. KOMITEE
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:
(VIA VIDEO/AUDIO)

For the Plaintiff:

Jo Saint-George, Esq.
Women of Color For Equal
Justice Maryland
350 E. Diamond Ave., Ste. 4077
Gaithersburg, MD 20877

For the Defendant:

Elisheva L. Rosen, Esq.
New York City Law Department
Labor and Employment
100 Church St., Room 2-316
New York, NY 10007

Transcription Service:

Transcriptions Plus II, Inc.
61 Beatrice Avenue
West Islip, New York 11795
RL.Transcriptions2@gmail.com

Proceedings recorded by electronic sound-recording,
transcript produced by transcription service

Proceedings

1 THE CLERK: Civil Cause for a Pre-Motion
2 Conference, *Women of Color For Equal Justice, et al v.*
3 *The City of New York*, docket number 22-cv-2234.

4 Before I ask you to state your appearances for
5 the record, there's a few things to go over.

6 First, these proceedings are public. The
7 recording and/or re-broadcasting of them are not allowed.
8 We're making an audio recording of today's call, so for
9 purposes of a clear record, please state your name each
10 time you speak. Speak slowly and mute your phone when
11 you're not speaking to eliminate background noises.

12 Would you all now please state your appearances
13 for the record starting with plaintiff's counsel.

14 MS. SAINT-GEORGE: This is Jo Saint-George.
15 First name spelled J-O, last name spelled S-A-I-N-T
16 hyphen George, G-E-O-R-G-E, attorney for the plaintiffs,
17 primary plaintiff Women of Color for Equal Justice along
18 with listed individual plaintiffs.

19 THE CLERK: Thank you. And for the defendant?

20 MS. ROSEN: Good morning, your Honor. Elisheva
21 Rosen from the New York City Law Department for city
22 defendants.

23 THE CLERK: Go ahead, Judge.

24 THE COURT: All right. Good morning,
25 everybody.

Proceedings

1 So here's where I understand this to be and the
2 purpose of this pre-motion conference. Well, the narrow
3 purpose is to determine whether we will go forward with
4 the plaintiff's proposed summary judgment briefing at the
5 same time we continue to decide the motion to dismiss.
6 But the broader purpose is really just to chart the path
7 forward more generally.

8 I understand us to be in the following place.
9 That we have a motion to dismiss this case pending from
10 the defendant and at the same time that the plaintiff I
11 think filed a motion for summary judgment without
12 following my individual rules and practices regarding
13 pre-motion conferences. I think I denied that as
14 untimely. And then we got this pre-motion conference
15 request in connection with summary judgment.

16 Ordinarily, as plaintiff counsel knows, summary
17 judgment is something we take up after discovery. Why is
18 it, if I can just ask this question, that you believe
19 that summary judgment would be appropriate now?

20 MS. SAINT-GEORGE: Thank you, your Honor, for
21 asking that question. There are no material facts in
22 dispute in this case. The statute was issued ordering
23 employees to be vaccinated, both private and public
24 sector. The individuals named as plaintiffs were all
25 denied their right to a religious exemption under the

Proceedings

1 OSHA statute that's protected that protects that right
2 and provides for automatic exemption. And each plaintiff
3 was put on leave without pay and has been on leave
4 without pay until now.

5 And while the statute was amended in March,
6 there's still ongoing disputes with the city regarding
7 the terms of their being reinstated and having their
8 rights to return to their jobs.

9 But the main issues in this case are all legal
10 questions. There are no facts in dispute that are
11 material that would ever change the legal issues of
12 whether or not the city had the right to order the 9
13 vaccine mandate, the right to put employees on leave
14 without pay, denied them their unemployment benefits, and
15 denied them their retirement. So none of those facts are
16 in dispute. It's just who's right, who has what right,
17 and that's why we have a request for a declaratory
18 judgment so that these rights of either plaintiffs and/or
19 defendant are clearly outlined and can stand forever
20 until new rights are declared either by Congress or by
21 the state.

22 THE COURT: Okay. Have we taken up the
23 question of organizational standing in this case yet?

24 MS. SAINT-GEORGE: We have. It is raised in
25 the motion to dismiss and I just want to clarify. We

Proceedings

1 have the motion to dismiss but we do have two other
2 pending motions. And I apologize for not including those
3 motions but I believe I did in my request which was a
4 motion to amend the complaint so that it's clearer, not
5 that we're adding new claims, but more solidly
6 identifying the issues that are before this Court.

7 And then we have a Rule 11 motion for sanctions
8 which you gave time for defendants to respond to. But
9 then we have the motion for summary judgment and motion
10 for class certification that you put on hold earlier last
11 year.

12 THE COURT: I'm pretty sure that I denied them
13 as untimely without prejudice. I don't think those
14 motions are pending anymore.

15 MS. SAINT-GEORGE: No, when I say pending, they
16 were filed and you said that due to noncompliance I
17 believe with your request, your requirement for requests
18 for a pretrial hearing. And so I'm actually asking for
19 purposes of consolidation and streamlining if this
20 hearing could also satisfy the request for the amended
21 complaint class certification and summary judgment so we
22 can wrap all this up because I think that all of them are
23 intertwined. The facts don't change for any one of them
24 and we're just --

25 THE COURT: All right. I asked the question

Proceedings

1 about associational standing. I want to just stick with
2 that one topic for now if we can.

3 MS. SAINT-GEORGE: Sure.

4 THE COURT: So the defendant has move to
5 dismiss on, among other bases, the standing issue. And
6 there are two potential positions I can see the plaintiff
7 taking in response to that motion.

8 One is the complaint already says everything it
9 needs to say about associational standing and so there's
10 no more factual developments necessary on that question.

11 Two is Judge, there are things we could tell
12 you about this association and why it should have
13 standing to sue but that are not in the complaint and we
14 want either to submit affidavits in connection with
15 jurisdictional discovery or to amend the complaint for
16 that purpose.

17 What is this association? When did it come
18 into existence? What does it do? Can you tell me?

19 MS. SAINT-GEORGE: Yes. It is a policy and
20 litigation organization that is nonprofit under the -- or
21 the parent organization, the Madison County Economic
22 Development. So the organization works with the Madison
23 County 501(c)(3) providing economic development, public
24 policy, and litigation services.

25 THE COURT:

Proceedings

1 THE COURT: (Inaudible) --

2 MS. SAINT-GEORGE: But we are in -- I'm sorry.

3 THE COURT: When did it come into existence?

4 MS. SAINT-GEORGE: Oh, 2019.

5 THE COURT: And when did this case get filed?

6 2021 or '02?

7 MS. SAINT-GEORGE: '22.

8 THE COURT: Okay. And what -- I don't want to
9 answer this question by reference to the parent company
10 or the parent organization. I want to stick with this
11 entity itself.

12 MS. SAINT-GEORGE: Sure.

13 THE COURT: What is it? What does it do other
14 than this case?

15 MS. SAINT-GEORGE: Oh, public policy and
16 litigation. So we actually draft legislation,
17 communicate with grass root organizations. We're not a
18 lobbyist group. We are just a nonprofit. We don't get
19 paid. We don't receive funding. We are an organization
20 of women lawyers who advocate on behalf of a community
21 who are disproportionately impacted by various issues
22 whether it be housing, healthcare, and specifically in
23 healthcare.

24 THE COURT: What is the concrete injury to that
25 plaintiff?

Proceedings

1 MS. SAINT-GEORGE: Well, we are a member
2 organization also. There are members who are part of the
3 organization. That's who we represent and work for in
4 the community. So just like any other organization that
5 comes before the federal court that are trade or industry
6 organizations that have members, that represent the
7 interests of those members, that's what this organization
8 does also. And we briefed that in our motion, response
9 to the motion to dismiss.

10 THE COURT: Okay. But to the extent we need to
11 develop the facts here, obviously we can't do that in
12 briefing. We need something that's cognizable as
13 evidence. So is there an affidavit in the record to that
14 effect? Is there a verified and sworn complaint where
15 somebody's making those statements under oath? What is
16 the factual record on the question of standing?

17 MS. SAINT-GEORGE: Well your Honor, so there's
18 hundreds of cases filed by nonprofit organizations and I
19 have never seen in the pleadings where there are
20 affidavits except for the affidavit with the complaint
21 that we file that outline and sworn that this
22 organization is a nonprofit and what it does. And that
23 was filed with the complaint itself. And that usually
24 meets the burden that organizations have when they come
25 before the Court.

Proceedings

1 So discovery would seem very targeted on our
2 organization in my opinion when there's other
3 organizations who come before the Court all the time and
4 go all the way up to the Supreme Court and no one asks
5 those types of questions.

6 THE COURT: No, I think that's clearly plainly
7 false that no one asks those questions. I think
8 questions about associational standing get asked all the
9 time because it is a novel exception generally speaking
10 to the rule that every plaintiff in federal court needs
11 to have suffered its own injury and it can't be suing to
12 enforce the rights of third parties. I don't think that
13 what you just said --

14 MS. SAINT-GEORGE: Oh no, I didn't mean the
15 legal issues that you're referring to aren't legal issues
16 that haven't been before the Court. I'm talking about
17 the need for discovery into those issues. But if this
18 Court --

19 THE COURT: Well, I'm not --

20 MS. SAINT-GEORGE: With all due respect, I
21 don't want to disrespect your concern about our standing.
22 I was just -- it's just something that I've seen
23 organizations file all the time and, you know, these
24 issues, I don't see them a lot, you know, at least in my
25 research of organizational standing spotlights. Every

Proceedings

1 year there's hundreds of motions around this issue. So
2 that's what I really meant. I apologize if I meant to
3 infer or any disrespect for your knowledge of these
4 issues.

5 THE COURT: Okay. But if I'm asking simply
6 whether you would like the opportunity to say anything
7 else on the subject of associational standing by
8 affidavit or in some other cognizable format at this
9 stage, is that something you would request or do not
10 request?

11 MS. SAINT-GEORGE: Oh no, absolutely. We can
12 provide it and that's not a problem. Full disclosure, I
13 assumed when we made our affidavit at the complaint stage
14 that that was sufficient. So if you're telling me --

15 THE COURT: It may well be. I don't want to
16 pre-judge anything. I haven't looked at the affidavit in
17 some time. And I'm not -- I don't want you to hear me to
18 suggest that I have a view right now on the sufficiency
19 of the record because I manifestly do not. All I'm
20 saying is I think as far as the order of operations year
21 is concerned my obligation under Article 3 and Supreme
22 Court case law is to tackle the jurisdictional issues
23 first and there seems to be a jurisdictional question on
24 the table here.

25 You said two very different things about this

Proceedings

1 association on this call. And it may be that both of
2 them are simultaneously true. I'm not doubting that at
3 this point at all. But thing one that you've said is
4 this is essentially a litigation and public policy based
5 organization that exists for those purposes. And thing
6 two, that this is also a membership organization that
7 represents the interests of its members including the
8 members who are claiming a personal injury or on whose
9 behalf the association is claiming a personal injury in
10 this case.

11 And for purposes of resolving the associational
12 standing issue, I think I'm going to need more about that
13 second category. So to the extent the organization has
14 members and has represented those members and those
15 members are people who are themselves asserting a
16 concrete injury here, how long have those people been
17 members for? Did they join just for purposes of this
18 case? Or was the association representing their
19 interests prior to this litigation and if so, how and in
20 what capacities. It may be that you want to say more
21 about that. It may not.

22 But let me just, in the interest of --

23 MS. SAINT-GEORGE: Sure.

24 THE COURT: -- of getting the schedule right
25 here say that I'm giving the plaintiffs until Friday of

Proceedings

1 next week, so a week from this Friday, to submit any
2 other affidavit or evidence that they want me to consider
3 in connection with the associational standing issue.
4 That's point one.

5 Point two is my intention is to decide the
6 motion to dismiss first. And so the pre-motion
7 conference request to submit summary judgment briefing at
8 this point is denied. I want to resolve the motion to
9 dismiss first.

10 The motion for class certification -- sorry,
11 the pre-motion conference request to file a motion for
12 class certification is also denied. I think it would be
13 premature at this point to take up the class
14 certification question when we've got more fundamental --
15 well, prior questions I should say, prior questions going
16 to the Court's jurisdiction and the sufficiency, the
17 legal sufficiency of the complaint's allegations. And so
18 we will not have summary judgment briefing or briefing on
19 class certification at this point.

20 The motion for sanctions I put in abeyance.
21 We'll take that up in due course. I will say, as
22 plaintiff's counsel already knows, moving for sanctions
23 on the basis that you have, namely that opposing counsel
24 has misrepresented key facts and law for the Court,
25 that's a very serious allegation and one that I'm sure

Proceedings

1 you do not make lightly. I will take that up in due
2 course. But motions like that obviously themselves have
3 to be very, very rigorous about adhering to the Rule 11
4 standard as well. And so all I'll say about the
5 sanctions motion at this point is again, I'm sure you
6 don't make it lightly, but we'll hold that in abeyance
7 until the motion to dismiss has been fully briefed.

8 So I think I've covered everything now. I
9 covered the order in which we're going to handle the
10 motions to dismiss. We're going to start with
11 associational standing. We're not going to deal with
12 summary judgment or class certification until after, at
13 least until after we've resolved the motion to dismiss
14 and the sanctions motion, you know, is submitted and
15 we'll deal with it in due course.

16 Is there anything else from the plaintiff in
17 terms of anything else? I don't want to --

18 MS. SAINT-GEORGE: Yes.

19 THE COURT: -- (indiscernible) issues from the
20 plaintiff that you want to take up at this point.

21 MS. SAINT-GEORGE: Yes, your Honor. In the
22 interest of time because the plaintiffs have waited a
23 long time and we have a lot of issues before the Court,
24 I'm going to now request that we be allowed to remove
25 Women of Color for Equal Justice. I don't think that the

Proceedings

1 necessity of having the organization name should preclude
2 this Court from moving forward more swiftly to address
3 very serious issues in this case.

4 THE COURT: You're absolutely --

5 MS. SAINT-GEORGE: And so --

6 THE COURT: Sorry --

7 MS. SAINT-GEORGE: -- I would like to withdraw
8 them if you accept my verbal withdrawal. I will file
9 today, if you will then accept our request to file the
10 fourth amended complaint, I can file that today without
11 our removing our name from it. And then if you can give
12 us a date for quickly the motion to dismiss, and I
13 believe that the motion to dismiss is intertwined with
14 the motion for summary judgment. Here's why I say that,
15 your Honor.

16 THE COURT: Let me jump in.

17 MS. SAINT-GEORGE: The motion to --

18 THE COURT: Let me jump in here. I'm sorry.
19 You remind me correctly that the motion that I neglected
20 to address in my order of operations was the motion for
21 leave to amend the complaint. So thank you for that.

22 So yes, if you want to drop the association
23 from the complaint from this case and you want leave to
24 amend the complaint, I'm sure you've seen in my
25 individual rules every motion for leave to amend the

Proceedings

1 complaint needs to be submitted with a blackline
2 showing --

3 MS. SAINT-GEORGE: I did that. It's already
4 been done.

5 THE COURT: No, I understand but now we have --
6 you're proposing a new amendment as well which is that
7 you want to drop the lead plaintiff from the case. So if
8 you would, submit that motion for leave to amend with
9 whatever the most current blackline is going to be as
10 soon as you can and in no event later than a week from
11 Friday.

12 And then let me just as the defense counsel
13 what is the defendant's position on leave to amend at
14 this point? It seems to me we should probably grant it
15 in an abundance of caution and then just proceed to
16 motion to dismiss briefing or to the 12(b)(6) on whatever
17 the amended complaint would be, but let me hear from
18 defense counsel on that question first.

19 MS. ROSEN: Your Honor, Elisheva Rosen for the
20 city defendants.

21 The city defendants oppose any request for a
22 fourth amended complaint. They've already amended
23 multiple times, your Honor. It would delay the process.
24 It is futile the amendment for the reasons that have been
25 briefed on the record. I'm happy to go into more detail,

Proceedings

1 but I vehemently oppose any request for an additional
2 amended complaint. And that's where I will leave it.

3 THE COURT: Why are the defendants
4 (indiscernible) the amendment?

5 MS. ROSEN: Well first off, your Honor, this
6 Court has already decided and the circuit has held that
7 there's no private right of action under OSHA. This
8 Court has already held that there is no cause of action
9 under the declaratory judgment rule. The Second Circuit
10 and indeed the Supreme Court has already held that a
11 vaccine mandate in the face of COVID-19 are lawful and
12 enforceable and not unconstitutional on their face.

13 So to further amend the complaint regarding
14 these issues is a waste of the Court's time and
15 resources, your Honor.

16 THE COURT: Okay. I still think we should be
17 proceeding to decide the motion to dismiss, you know,
18 based on the (indiscernible) in terms of the plaintiff's
19 allegations. And so at the very least to the extent the
20 plaintiff wants, or the plaintiff's counsel wants to drop
21 the association that is now the lead plaintiff from the
22 case, we should see a proposed amended complaint on that
23 basis.

24 So Ms. Saint-George, if you can get us, as
25 early as you can, a letter just saying -- like if all you

Proceedings

1 want to do beyond that which you've already proposed to
2 do is drop the lead plaintiff, just tell us that by
3 letter and I will respond accordingly and quickly. All
4 right?

5 But yes, one way or another, whether it's on
6 the basis of the proposed amended complaint -- you know,
7 generally speaking when the basis for denying leave to
8 amend is futility, it seems to me that as a practical
9 matter it just makes more sense to grant leave to amend
10 and then deny the motion on substantive -- I'm sorry,
11 grant the motion to dismiss if that's appropriate on
12 substantive 12(b) (6) grounds than it is to deny leave to
13 amend in the first place on futility grounds. It's
14 pretty much the same exact analysis, right? Like whether
15 amendment would be futile is the same question I think as
16 you're asking when you ask the complaint fails to state a
17 claim. Right? There's no difference --

18 (Interruptions on the phone line)

19 THE CLERK: Please mute yourself. Paula, mute
20 yourself. Paula, please mute yourself, Paula. Sorry
21 about that, your Honor.

22 THE COURT: It's okay. It sounds like Paula's
23 been muted.

24 So I was just saying to the city defendants I
25 don't really see any practical difference between denying

Proceedings

1 leave to amend on futility grounds on the one hand and
2 granting leave to amend and then granting a motion to
3 dismiss on 12(b)(6) grounds of failure to state a claim.
4 It seems to me it's pretty much the exact same analysis
5 you're going through either way and yet the ultimate
6 result is on firmer and more final ground for appeal when
7 we've proceeded in the latter way instead of the former
8 way.

9 So that's generally my inclination but either
10 way like I'm not sure I would even need any supplemental
11 briefing from the defendants in connection with the
12 proposed amendment. If I grant leave to amend and the
13 defendant wants the opportunity to put in a three-page
14 letter on why the amendments don't change the analysis in
15 your motion briefing, I would grant that request for a
16 three-page letter brief. But we'll proceed expeditiously
17 on that front one way or the other.

18 The first step here is that if the plaintiff
19 wants to drop the lead plaintiff, the association, from
20 the claim and proceed instead on individual plaintiffs,
21 we should know that as soon as possible.

22 MS. ROSEN: Your Honor --

23 THE COURT: And that the deadline I set there
24 is tell us by a week from Friday but if you want to tell
25 us sooner, that's fine too. Yes?

Proceedings

1 MS. ROSEN: Your Honor, Elisheva Rosen for the
2 city. I apologize for interrupting. If the lead
3 plaintiff I'm going to call her wants to withdraw from
4 the lawsuit, I do not, the city defendants don't oppose
5 that. We would oppose any amendment other than that.
6 Apologies for not being more clear.

7 THE COURT: But did you hear my point about
8 how --

9 MS. ROSEN: Yes, I did, your Honor.

10 THE COURT: -- the same analysis, whether you
11 deny leave to amend on futility grounds or grant leave to
12 amend and then take on a 12(b)(6) question? What am I
13 missing?

14 MS. ROSEN: I hear, your Honor. My concern is
15 that if there is yet another proposed amendment and
16 complaint filed for the Court to adopt or deny that might
17 be new claims that have not even been previously briefed.

18 THE COURT: Oh yes, that I understand, but
19 we're not talking about that. The plaintiff is not
20 asking to add new causes of action. And I agree with
21 you, that would be a different thing entirely. But all
22 the plaintiff has said, and I think all they've done so
23 far, tell me if I'm wrong, is add additional factual
24 content to the complaint, not change the character of the
25 case as a whole by adding new causes of action. Is that

Proceedings

1 correct?

2 MS. SAINT-GEORGE: Your Honor, this is Jo
3 Saint-George for the plaintiff. You're correct we just
4 made --

5 THE COURT: Sorry, that was a question for the
6 defense lawyer who I was just --

7 MS. SAINT-GEORGE: Oh, I'm sorry.

8 THE COURT: That's okay.

9 MS. ROSEN: Your Honor, Elisheva Rosen for the
10 city defendants. I hear that, I hear that, your Honor.
11 I would still request that we would have an opportunity
12 to respond if we deem it necessary upon seeing the --

13 THE COURT: I'm asking a different question
14 than that.

15 MS. ROSEN: Oh.

16 THE COURT: The question I'm asking is the
17 existing motion for leave to amend which I'm told has
18 been submitted alongside a blackline showing the changes.
19 Is that pending motion for leave to amend simply to add
20 additional factual content to the complaint or would that
21 pending motion also amend the complaint to add new causes
22 of action entirely?

23 MS. ROSEN: My understanding, your Honor, is
24 that it also seeks to add some legal claims. But it has
25 been a while since I have looked at the redlined copy.

Proceedings

1 THE COURT: Okay. Yes, that might change my
2 analysis. Either way, I'll resolve this question --

3 MS. SAINT-GEORGE: Your Honor --

4 THE COURT: -- quickly. Ms. Saint-George, if
5 you can just tell us again by a week from Friday exactly
6 what you want to do in terms of amendment including with
7 respect to dismissing any existing plaintiff, that will
8 get us where we need to go. Yes, Ms. Saint-George, I'll
9 let you have the last word and then we'll --

10 MS. SAINT-GEORGE: Yes. There are no new
11 claims. What happened, your Honor, is when we had this
12 conversation a year ago and I made the one amendment that
13 was substantive with regards to claims, we inadvertently
14 didn't clarify the Title 7 claim. The original complaint
15 had Title 7, 1983, OSHA, and some other claims. We
16 dropped two claims so it could be a clean case. All this
17 does, all this amendment does is put in order what the
18 claims are; declaratory judgment, OSHA under Section
19 11(c)(1), and then a 1983 with Title 7, all of which were
20 already pled but just more carefully detailed with all
21 the proper -- you know, everything just aligned. So
22 there is absolutely nothing new. All the legal issues
23 that they have raised in their motion to dismiss will be
24 exactly the same.

25 And so there is no injury or injury to the

Proceedings

1 defendants which is the standard by which this Court I
2 believe is to use to determine whether an amendment
3 should be allowed. There would be no prejudice. That's
4 what I should say. So there is no prejudice. Everything
5 is exactly the same just more clearly outlined with
6 regards to the rights under every statute, you know,
7 every -- articulated more clearly.

8 But I would like to ask your Honor, because of
9 the delay in the timing -- many of these plaintiffs are
10 teachers many of which may want to have opportunity to
11 return to teaching. And so my question is is can we go
12 ahead and calendar two things? Since it sounds like
13 you're allowing us to amend, we will file the amendment
14 by tomorrow. Can we put on the calendar the motion to
15 dismiss and as I was about to say the motion for summary
16 judgment. Here's why.

17 THE COURT: No. So I don't want that question
18 up again. I have heard full argument on the motion for
19 summary judgment. We will not be taking it up now.

20 I'm not sure I need oral argument on the motion
21 to dismiss. We've heard a lot about this case and there
22 have been a lot of district court and Second Circuit
23 decisions. And as pointed out, there's been litigation
24 on this issue or related issue perhaps at the Supreme
25 Court level. There may be no need for oral argument. If

Proceedings

1 I need oral argument, I will schedule it quickly.

2 I do understand, believe me, the piece about
3 the need for an expeditious resolution of this case and
4 it is my intention to make that happen as best I can
5 given the current case load. But we will not be
6 scheduling oral argument now on any motions and we will
7 not be entertaining summary judgment briefing.

8 MS. SAINT-GEORGE: your Honor --

9 THE COURT: So thank you, all. That I think
10 resolves all the issues that I came in with for today's
11 purposes. We'll see what the plaintiff files in terms of
12 amending the complaint.

13 And by the way, this new proposed amendment
14 should be on one issue and one issue only and that is the
15 makeup of the plaintiffs on the docket, just who are the
16 plaintiffs and who are not the plaintiffs, but not
17 otherwise make --

18 MS. SAINT-GEORGE: Are you saying that I -- are
19 you saying that we cannot file the fourth amended
20 complaint as already submitted with the additional
21 removal of the --

22 THE COURT: That I will consider, but that
23 motion is already pending. Right? I'm saying I don't
24 want to see, unless you tell me now that you want to ask
25 for that, I don't want you to be asking for still

Proceedings

1 additional changes to the complaint in terms of
2 factual --
3

4 MS. SAINT-GEORGE: No, your Honor. I briefed
5 it and I asked for a hearing. And in my request for this
6 hearing I included in my request that this Court will
7 also consider the amended complaint. So it is properly
8 before the Court.

9 THE COURT: Okay. So I understand that. So --

10 MS. SAINT-GEORGE: No, there is
11 not absolutely --

12 THE COURT: -- to the extent, to the extent
13 you're going to be filing or you're going to be
14 supplementing your motion for leave to amend, you should
15 supplement it only to the extent of telling me what you
16 want to do in terms of dropping one or more plaintiffs.
17 You should not propose additional changes to the
18 complaint's factual content and/or its causes of action.
19 That's all I'm saying.

20 MS. SAINT-GEORGE: I got it. I'm sorry, I
21 misunderstood you and thank you for clarification.

22 THE COURT: Okay. No, thank you for clarifying
23 as well. We will --

24 MS. SAINT-GEORGE: Your Honor though --

25 THE COURT: -- be adjourned and --

Proceedings

1 MS. SAINT-GEORGE: -- I do have one more --

2 THE COURT: Yes.

3 MS. SAINT-GEORGE: I do have one more question.

4 Oral argument on the motion to dismiss is a real critical
5 important aspect because motions to dismiss claims, an
6 entire case is critical. And I think there needs to be
7 oral argument because we are making argument that clearly
8 clarify what the federal court, the Second Circuit, and
9 the Supreme Court has really said. And so I'm asking
10 your Honor please, if you will grant oral argument so
11 that we can have the discussion because this issue has
12 never been addressed.

13 (Interruptions on the phone line)

14 THE CLERK: Please mute yourself. Please mute
15 yourself.

16 MS. SAINT-GEORGE: Thank you. This case, this
17 issue has never been addressed in the history of America
18 and the OSHA statute has clear and unequivocal language
19 in it that no court has tackled not because they couldn't
20 have, but because it was never presented. So that is why
21 this motion to dismiss is essentially and having an oral
22 argument around it so this Court can get comfortable as
23 opposed to us having to go through this back and forth
24 back and forth that plaintiffs --

25 THE COURT: I understand your argument. I do

Proceedings

1 often find oral argument helpful in respect of legal
2 questions and that's obviously all we're taking up at the
3 motion to dismiss stage. But that's not always the case.
4 And so once you've filed your last filing on this, we'll
5 take a look at it and either schedule oral argument
6 quickly or I'll determine I'm ready to proceed to a
7 decision without oral argument. We'll take that question
8 up when we get there but I'm just not there yet. So --

9 MS. SAINT-GEORGE: But for the record, I am
10 making the request for the record though just so that my
11 record is clear that I did make the request.

12 THE COURT: Yes, I understand that. There's
13 obviously no obligation that I'm aware of in the Rules of
14 Civil Procedure or otherwise to hold oral argument
15 especially in a case where we've had legal briefing on
16 and I think argument on preliminary injunctive relief
17 among other things.

18 MS. SAINT-GEORGE: Well, we didn't have oral
19 argument on the injunctive relief either. So we've never
20 had oral argument on anything that's been pending before
21 this Court.

22 THE COURT: Okay. All right. Thank you, all.
23 I will look for the next submission here and I will
24 endeavor to move quickly in response.

25 (Matter concluded)

C E R T I F I C A T E

I, MARY GRECO, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 21st day of August, 2023.

Mary Greco
Transcriptions Plus II, Inc.